

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 17 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at
Tarime in Misc. Land Application No. 92 of 2021 Originating from
Itiryo Ward Tribunal in Land Dispute No. 2 of 2020)*

IBRAHIM WAMBURA WANCHOKE APPELLANT

Versus

DANIEL PASCHAL KIUSI RESPONDENT

JUDGMENT

15.06.2022 & 15.06.2022

Mtulya, J.:

*Nilikuwa nafuatilia nakala ya hukumu ya Baraza la Kata
kwa Katibu wa Baraza la Kata [Itiryo], Bwana Chacha
Musweta...alikuwa ananipiga kalenda njoo uchukue
nakala ya hukumu kesho mara kesho mpaka muda wa
kukata rufaa ukaisha bila ya kupata nakala ya hukumu*

The cited passage above was extracted from today's proceedings in this court during the hearing of **Misc. Land Appeal Case No. 17 of 2022** (the appeal) filed in this court on 21st December 2021, between Mr. Ibrahim Wambura Wanchoke (appellant) and Daniel Paschal Kiusi (the respondent). The passage

was part of the appellant's assertion to substantiate the only registered ground of appeal in the present appeal to persuade this court to decide in his favour. The ground was drafted in the petition of appeal in the following words:

That the Honourable chairman erred both in law and fact in failing to give the appellant an opportunity to be heard despite the fact that he has the constitutional right to be heard.

Following the ground of appeal and allegations of the appellant on the subject of right to be heard, the respondent was invited to register relevant materials to reply the complaint of the appellant today morning hours. In his brief submission, the respondent submitted that the appellant had delayed himself for almost five (5) months without any good cause as the copy of the decision of the **Itiry Ward Tribunal** (the ward tribunal) in **Land Dispute No. 2 of 2020** (the dispute) was available and supplied to the parties within time.

In order to bolster his argument, the respondent claimed that the copy of the decision of the ward tribunal was available and ready for collection at the ward tribunal's offices since its delivery on 9th November 2020 and time limitation to prefer an appeal within time ended on 25th December 2020, whereas the appellant

had filed an application for enlargement of time in **Misc. Land Application No. 92 of 2021** (the application) on 14th April 2021 before the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal). In the respondent's opinion, the appellant did not make any follow-ups of the copy at the ward tribunal's offices as the ward tribunal sits every Monday and Friday at the offices which are located at Itiry Centre to determine land disputes. The respondent submitted further that the appellant had declined to enjoy the rights of appeal and be heard. Similarly, the respondent blamed the appellant for failure to register complaints to higher authorities than the ward tribunal or other ethics committees to assist him in collecting the copy. Finally, the respondent claimed that the appellant is inviting tricks to obstruct justice to the respondent.

In his brief reply the appellant submitted that the copies of the decision of the tribunal were not issued within time and it came a time he was depicted as a rebel against the tribunal and complained that: *Karani wa Baraza alikuwa ananipiga chenga*. Finally, the appellant prayed to be granted enlargement of time to cherish the right to be heard as enacted in the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution).

I perused the record of the present appeal and found original handwritten judgment of the tribunal showing it was read before the parties on 9th November 2020, but was ready for collection to the parties on 18th February 2021, and duly signed by six members of the ward tribunal, namely: LUCUS M. CHACHA, BONIPHACE. I. MGAYA, SEILINA M. MATIKO, JOHANES S. HONGA, MARIAM M. JOJI and AGNES R. MAKURI. The same was authenticated by both Chairman and Secretary of Itiry Ward Tribunal, Mr. Marwa M. Sibuti and Mr. Joseph Chacha Musweta respectively. From the record it is vivid that the copy of the decision was supplied to the parties after expiry of forty five (45) days from when the decision was pronounced by the ward tribunal.

I am aware that there is typed judgment of the ward tribunal in the record. However, the copy cannot be relied by this court because it is contrary to the original document and in any case, it has a bunch of discrepancy in wording, dates and signature of the six members. It is also that the typed text tacks two signatures of women members SELINA M. MATIKO and AGNES R. MAKURI. Despite all these discernible issues, the learned Chairman of the district tribunal in the application had declined to determine in favour of enlargement of time for the appellant to file an appeal out of time to settle the matter. The reasoning of the Chairman is found at page 2 of the decision of 22nd October 2021, that:

Mleta maombi ameshindwa kulithibitishia Baraza hili kuwa alifuatilia nakala ya hukumu kwa wakati na Baraza la Kata kumchelewesha kumpa nakala hiyo. Naona maombi haya hayana maana yoyote.

This decision of the district tribunal and its associated reasoning was not based on the available record of the application hence must be quashed and the proceedings which moulded the decision is required to suffer the consequences of set aside order in favour of proper record of the tribunal (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021

Having said so and considering the district tribunal did not fall within the record of the application, and noting that both rights to appeal and be heard are human and constitution rights enshrined in the Bill of Rights under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and cherished in a number of precedents of this court and Court of Appeal, I hereby quash the decision and set aside proceedings of the district tribunal in the application.

I further, allow the appeal and grant the applicant forty five (45) days leave to prefer an appeal in the district tribunal without

any further delay, and according to laws regulating appeals from the ward tribunals to the district tribunals. I do so under the mandate endowed to this court under section 43 (1) (b) and (2) of the **Land Disputes Courts Act** [Cap. 216 R.E 2019]. I award no costs in the present appeal as the dispute is still on the course to the district tribunal to identify the rightful owner of the disputed land. Each party shall bear its own costs.

It is so ordered.



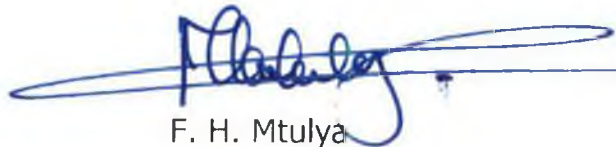
F. H. Mtulya

Judge

15.06.2022



This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Ibrahim Wambura Wanchoke and in the presence of the Respondent, Mr. Daniel Paschal Kiusi.



F. H. Mtulya

Judge

15.06.2022